

REMARKS

Claims 1-20 are pending in the application.

Claims 1-20 have been rejected.

Claims 1, 8, and 16 have been amended as set forth herein.

Claims 1-20 remain pending in this application.

Reconsideration of the claims is respectfully requested.

I. CLAIM REJECTION UNDER 35 U.S.C. §102

Claims 1-3, 7-10, 14 and 16 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,968,192 to *Longoni*, hereinafter “*Longoni*.¹” This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; In re Bond, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. MPEP § 2131; In re Donohue, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Claim 1 comprises unique and novel elements, including those emphasized below:

1. (Previously Presented) For use in a wireless network comprising a plurality of wireless communication devices, an interrogating state machine comprising:

a server status store operable to store current server status information for each of a plurality of servers, the current server status information for each server comprising load information for the server and *capability information for each server*; and

a server assigner operable to collect server status information from the servers, to store the server status information in the server status store as current server status information, and to assign one of the servers to host one of the wireless communication devices based on the current server status information.

Applicant respectfully submits that the element, "*a server assigner operable to collect server status information from the servers, to store the server status information in the server status store as current server status information, and to assign one of the servers to host one of the wireless communication devices based on the current server status information*" is not taught, suggested, or anticipated by the prior art of record.

The Examiner has asserted that this element is taught by col. 6, ll. 38-44. For the purpose of clarity, this section is reproduced below:

After the receipt of the load information, the procedure continues at step S106. In step S106, the load status of the candidate cell is checked in the decision means 21. Based on the load status of the candidate cell, the allowance of the candidate cell to be added to the active set of the MS 1 is decided by the decision means 21 (step S107).

In the embodiment disclosed by the art of record, the local MS determines if there is capacity to add another cell. This is not the same as the disclosed "server assigner" which is "*operable to*

collect server status information from the servers, to store the server status information in the server status store as current server status information, and to assign one of the servers to host one of the wireless communication devices based on the current server status information." Nowhere in the cited prior art is a server assigner disclosed that instructs a server to host wireless communication. Rather in the cited art, each base station in the prior art makes an independent decision as to when to accept communication.

Moreover, Claim 1 has been amended to include the language "capability information for each serve". This language is fully supported by the specification, and is respectfully submitted not to introduce any new matter. The prior art of record does not teach, suggest, or anticipate using capability information when assigning a server to host wireless communication.

Independent Claims 8 and 16 comprise elements substantially similar to those discussed above, and therefore are respectfully submitted to be patentable for the same reasons as discussed above.

Claims 2-7, 8-15, and 17-20 depend directly or indirectly from Claims 1, 8, and 16 and are therefore submitted to be similarly patentable over the art of record.

Accordingly, the Applicant respectfully requests the Examiner to withdraw the § 102 rejection with respect to these claims.

II. CLAIM REJECTION UNDER 35 U.S.C. § 103

Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Longoni reference. Claims 5, 6, 12, 13 and 17-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Longoni reference in view of U.S. Publication No. 2003/02106694 to *Jayaraman et al.*, hereinafter “Jayaraman.”. Claims 4 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Longoni reference in view of the admitted prior art, APA, of Shih. The Applicant respectfully traverses the rejection.

In ex parte examination of patent applications, the Patent Office bears the burden of establishing a prima facie case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a prima facie basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a prima facie case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A prima facie case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

Claims 4-6, 11-13, 15, and 17-20 depend directly or indirectly from Claims 1, 8, and 16 and are submitted to be patentable over the art of record for the reasons stated above.

Accordingly, the Applicant respectfully requests the Examiner to withdraw the § 103 rejection with respect to these claims.

CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining claims in the Application are in condition for allowance, and respectfully requests that this Application be passed to issue.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at jmockler@munckcarter.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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